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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/650,801	08/30/2000	Peter J. Potrebic	14531.77	1181

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WORKMAN NYDEGGER/MICROSOFT
1000 EAGLE GATE TOWER
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SALT LAKE CITY, UT 84111

EXAMINER

VENT, JAMIE J

ART UNIT	PAPER NUMBER
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2621

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/650,801

Applicant(s)

POTREBIC ET AL.

Examiner

Jamie Vent.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7,8,22-25,32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7,8,22-25,32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 2, 2007 has been entered.

Response to Arguments

Applicant's arguments filed January 2, 2007 have been fully considered but they are not persuasive. On pages 7-11 applicant argues that Ward et al in view of Marsh et al in further view of Bertis fails to disclose, teach, or fairly suggest the following limitation, "Storing at the system, information specifying that the user has selected both the first and the second program to be recorded, despite the existence of conflict at the time the user inputs selecting the second program is received" as recited in independent Claim 1. Ward et al discloses a system that allows for recording of shows through an EPG. The system stores both of the programs to be recorded and if a conflict is present will prompt the user to resolve the conflict; however, until the conflict is resolved both the program information is stored in the system as described in Column 12 Lines 38+. Although, all of applicants points are understood the examiner can not agree and therefore the rejection is maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1,2,5, 7-8, 22-25, 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward et al (US 6,756,997) in view of Marsh et al (US 6,208,799) in further view of Bertis (US 6,564,005).

[claim 1]

In regard to Claim 1, Ward et al discloses a system that includes a recording apparatus, a method for controlling the recording apparatus in response to programs that have been selected for recording and that have been selected for recording and that have coinciding broadcast times, the method comprising the acts of:

- Receiving user input from a particular user selecting a first program for recording, the first program having a first broadcast time (Figure 2 shows the input means used to input the selection of recording as described in Column 3 Lines 12-67+ through Column 4 Lines 1-20 which describes the receiving of the user input to select information pertaining to recording of the broadcast);
- Receiving user input selecting a second program for recording, the second program having a second broadcast time that at least partially coincides with the first broadcast time and determining that a conflict exists between the first program and the second program and storing, at the system, information specifying that the user has selected both the first and second program to be recorded (Column 10 Lines 47-60 the user can choose two program to be

recorded as further discussed in Column 12 Lines 37-67 the conflicts are resolved based on priority of the requested broadcast segment);

- Determining that a conflict exists between the first program and the second program (Column 12 Lines 37-67 describes the system determining that a conflict exists);
- Storing at the system, information specifying that the user has selected both the first and the second program to be recorded (Column 12 Lines 66-67 through Column 13 Lines 1-9 describe the storing of information of a desired recording so that the recording can occur at later time that does not result in a conflict with the first priority program);
- the system automatically selecting the first program for recording in accordance with priority rules, an override, or an optional selection of the second program (Column 12 Lines 45-65 describes the system selecting the first program that has priority and further describes an optional selection of the second program);
- programming the recording apparatus to schedule recording of the first program at the first broadcast time (Column 12 Lines 45-65 further describes the recording of the first broadcast at the first broadcast time due to the resolving of the conflict); however fails to disclose
- subsequent to programming the recording apparatus to record the first program at the first broadcast time, continuing to store, at the system, the information specifying that the user has selected the second program to be recorded, at the broadcast time and the second broadcast time respectively, which are at least partially coinciding with the first broadcast time, without requiring a user to resolve the conflict, wherein the continued storage preserves the possibility of

automatically scheduling the recording of the second program during at least a portion of the second broadcast time in response to a subsequent event and in response to the subsequent event, wherein the subsequent event comprises at least one of detecting that a new tuner has been added to the recording apparatus or detecting that at least one of a start or stop time for at least one of the first program or second program has changed from the first broadcast time or second broadcast time respectively, automatically programming the recording apparatus to schedule recording of the second program subsequent to programming the apparatus to schedule recording of the first program and using the stored information specifying that the user has selected to second program to be recorded without requiring the user to reselect the second program to be recorded.

Marsh et al discloses a recording system wherein timeslot adjustments are made for proper recording of programs. Furthermore, it is seen in Figure 9a-9b that timeslot conflict exists and thereby allows for the system or user to find a "future-time" program of one of the conflicting programs and thereby set it to record as described in Column 2 Lines 5+. Additionally, the process of finding new program to resolve the conflict for the system is described in Column 13 Lines 17-43. It is discussed in Column 14 Lines 17-62 describes the storing of program data which compares the information based on first and second program selected by the user and determines what program is to be recorded. This option of finding additionally time slots of a second program provides a system with one tuner to provide an efficient and reliable recording system of all programs even if a conflict is determined. Furthermore, Bertis discloses a system that allows the user to set priority of the recordings as seen in Figure 10 and described in Column 9 Lines 1-17. The priority of programs allows the importance of the program to be

shown and what programs are to be recorded. The features of having various priority system for all users allows the system to become a more efficient system for recording various programs for various users as further described in Column 2 Lines 1-44. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the recording apparatus, as disclosed by Ward et al, and further incorporate a system wherein conflict resolution provides an alternative solution by finding additionally programming times and recording, as disclosed by Marsh et al, and further incorporate the use of priority system, as disclosed by Bertis, to allow the system to record the appropriate program.

[claim 2]

In regard to Claim 2, Ward et al discloses a method further comprising the act of communicating to the user information specifying that the conflict exists and that the second program is to be recorded only if the conflict is resolved prior to the second broadcast time (Column 13 Lines 48-54 describe the communication that occurs from the system stating that a conflict exists).

[claim 5]

In regard to Claim 5 Ward et al discloses the following acts:

- in response to the subsequent event, the system automatically reevaluating the conflict based on the stored information, the subsequent event occurring subsequent to program the recording apparatus to schedule recording of the first program (Column 12 Lines 60-67 through Column 13 Lines 1-9 discloses a system automatically detects a conflict occurring); and
- Programming the recording apparatus to schedule record the second program during at least portion of the second broadcast time (Column 12 Lines 60-67 through Column 13 Lines 1-9 describes scheduling the second program at a different time to avoid the conflict);

- reevaluating that the conflict has been resolved is conducted in response to the first program having been preempted such that the first program is not broadcast at the first broadcast time (Column 13 Lines 1-10 describes the reevaluation of the programs to determine if conflict has been resolved).

[claims 7 & 8]

In regard to Claims 7 and 8, Ward et al discloses a method wherein the act:

- reevaluating the conflict is conducted in response to at least one of a start time and an end time of at least one of the first program and the second program changing from that which was scheduled, such that no portion of the first program coincides with any portion of the second program (Column 11 Lines 50-63 describes the reevaluating of broadcast times);
- reevaluating the conflict comprises of the act of analyzing broadcast data broadcast on a channel that includes one of the first program and the second program, the broadcast data identifying said at least one of the start time and the end time of said at least one of the first program and the second program (Column 12 Lines 35-67 describe the evaluation of the two set recorded programs).

[claim 22]

In regard to Claim 22, Ward et al in view of Marsh et al, as previously discussed in Claim 1, discloses a system that includes a recording apparatus, a method for resolving conflicts between programs that have been selected for recording and have coinciding broadcast times, the method comprising the additional limitations of:

- Receiving input selecting a second program for recording, the second program having an expected second broadcast time having an expected start time and an

expected end time, wherein the expected broadcast time at least partially coincides with the first broadcast time (Figure 2 shows the input means used to input the selection of recording as described in Column 3 Lines 12-67+ through Column 4 Lines 1-20 which describes the receiving of the user input to select information pertaining to recording of the broadcast);

- Monitoring broadcast data on a channel on which the second program is to be broadcast to determine that at least one of an actual start time and an actual end time differs from the respective expected start time and expected end time (Figure 6 shows the monitoring of programs while Column 11 Lines 50-67 describes the determination of the correct start and end times); and
- Upon determining that at least one of an actual start time and an actual end time of an actual second broadcast time differs from the respective expected start time and expected end time determining whether both the first program and the second program can be recorded, as a result of the actual broadcast time and the first broadcast time coinciding, and, if so, recording both the first program and the second program using the recording apparatus (Column 12 Lines 37-67 describes the conflict resolution that is used when it is determined that a conflict could occur and thereby resolving the conflict).

[claims 23 & 24]

In regard to Claims 23 and 24, Ward et al discloses the first broadcast time does not coincide with the expected second broadcast time and the first broadcast time at least partially coincides with an actual second broadcast time defined by the actual start time and the actual end time such that:

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- Act of determining whether both the first program and the second program can be recorded results in a determination that one of the first program and the second program can not be recorded (Column 12 Lines 37-67 describes the determination if the programs can be recorded without conflict); and
- Act of recording all of the second program during the actual second broadcast time as opposed to recording only that portion of the second program that is broadcast during the expected second broadcast time (Column 13 Lines 1-17 describes the act of recording the entire second program).

[claim 25]

In regard to Claim 25, Ward et al discloses a method wherein the first broadcast time at least partially coincides with the expected second broadcast time and the first broadcast time does not coincide with an actual second broadcast time defined by the actual start time and the actual end time, such that:

- Conflict between the first broadcast time and the expected second broadcast time is resolved and both the first program and the second programs are recorded (Column 13 Lines 1-17 describes the resolution of the conflict between the two programs and that both programs are recorded).

[claims 32 & 33]

In regard to claims 32 and 33, Vallone et al discloses the method further comprises the acts of:

- prior to the conflict being resolved, receiving user input selecting a third program for recording at a third broadcast time (Column 7 Lines 35-57 describes that the user can select various program to be recorded); and
- prior to the act of programming the recording apparatus to record the second program and after the conflict is resolved, reconsidering which of the selected

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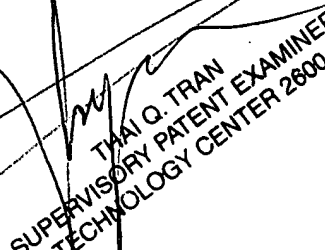
programs, including the second program and the third program, are to be recorded, using a priority list that lists the programs in an original order in which the selected programs were selected or using a priority list that lists the selected programs first by whether the recording apparatus was originally programmed to record the selected programs and second in an original order in which the selected programs were selected (Column 13 Lines 1-20 describe the act of programming the recording apparatus for an additional program)

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamie Vent whose telephone number is 571-272-7384. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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